IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

WP(C).No. 16093 of 2004(N)

PETITIONER:

V.PUSHPAVATHY, AGED 54 YEARS,
W/O.M.BALAN NAIR, UPPER PRIMARY SCHOOL ASSISTANT,
A.N.M.U.P.SCHOOL, MANITHARA, THRISSUR.

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENTS:

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1. THE STATE OF KERALA, REP. BY THE
SECRETARY TO GOVERNMENT, GENERAL EDUCATION
DEPARTMENT, SECRETARIAT, TRIVANDRUM.

2. THE DEPUTY DIRECTOR OF EDUCATION,
THRISSUR.

3. THE ASSISTANT EDUCATIONAL OFFICER,
THRISSUR WEST, P.O. OLARIKKARA.

4. THE HEADMASTER,
A.N.M.U.P.SCHOOL, MANITHARA, THRISSUR DISTRICT.

BY GOVERNMENT PLEADER, SRI.T.T.MUHAMOOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: COPY OF THE PAY FIXATION OF THE PETITIONER.

EXT. P2: COPY OF THE G.O.(P) NO.380/94/(13)/FIN. OF THE GOVERNMENT.

EXT. P3: COPY OF THE CIRCULAR NO.46/90/FIN. OF THE GOVERNMENT.

EXT. P4: COPY OF THE G.O.(P) NO.481/94/(20)/FIN. OF THE GOVERNMENT.

EXT. P5: COPY OF THE G.O.(P) NO.352/96/(86)/FIN. OF THE GOVERNMENT.

EXT. P6: COPY OF THE STATEMENT OF FIXATION OF PAY.

EXT. P7: COPY OF THE OBJECTION OF THE 2ND RESPONDENT.

EXT. P8: COPY OF THE JUDGMENT IN O.P. NO.1049/1995-V.

EXT. P9: COPY OF THE JUDGMENT IN W.A. NO.1578/2003.

EXT. P10: COPY OF THE ORDER NO.P-05/PEN.A/279/OJ/05-06 OF THE ACCOUNTANT GENERAL DATED 27-09-2005.

/TRUE COPY/

P.A. TO JUDGE

JP

S.SIRI JAGAN, J.

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W.P.(C) No. 16093 of 2004(N)

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Dated this the 7th day of December, 2007

JUDGMENT

The petitioner entered service as a UPSA on 15..7.1975. She completed 20 years of service on 15.7.1995. In the meanwhile, the 1992 pay revision order came in to force with effect from 1.3.1992. She originally preferred her option for coming over to the revised scale. Later by Ext. P2 Government Order, the PD and graduate teachers were permitted to re-opt for the time bound higher grade which fell due on or after 1.3.1992. Accordingly, the petitioner filed her re-option for coming over to the revised scale with effect from 15.7.1995 which is the date on which her 20 year Higher Grade fell due. This re-option was accepted and on refixation of pay, the petitioner refunded excess pay drawn as per the earlier fixation. petitioner's grievance in this writ petition is that now as per Ext.P7, her re-option has been objected to by the audit party on the ground that the re-option can only be in respect of grades which have already fallen due as on the date of Ext.P2, namely

9.6.1994. The petitioner submits that in view of Ext.P5 order this objection is not valid. In the above circumstances, the petitioner seeks the following reliefs:

> "(a) call for the records relating to Exhibit P-7 and quash the original of the same by the issue of a writ of certiorari or other appropriate writ or order.
>
> (b) declare that the Exhibit P-1 re-option exercised by the Petitioner and Exhibit P-6 fixation of pay of the Petitioner in terms of Exhibits P-2 to P-5 are legal and valid.
>
> (c) pass such other order or direction which this Hon'ble Court may deem fit and proper to grant in the circumstances of the case."

2. The learned Government Pleader submits that from Ext.P1 it is abundantly clear that the re-option can only be in respect of a time bound higher grade which has already fallen between 1.3.1992 and 9.6.1994, and therefore, the petitioner should have re-opted for the Higher Grade only on a date between 1.3.1992 and 9.6.1994.

3. I have considered the rival contentions. Going by Ext.P2 alone perhaps the contention of the Government Pleader could have been accepted because Ext. P2 specifically says that PD and graduate teachers will be permitted to opt for the time bound grade which have fallen due granted first on or after 1.3.1992, cancelling the option already exercised in respect of

the post held immediately prior to 1.3.1992. But in Ext.P5 Government order dated 11.4.1996, it is specifically directed, thus:

> "Accordingly in partial modification of the orders issued in the G.O. second read above, Government are now pleased to order that regular promotion/time bound grade fell due/granted to Government employees and teaching and non-teaching staff of Aided Educational Institutions, upto 31-5-1996 alone be permitted to opt for 1992 Pay Revision."

4. In view of Ext.P5, it does not admit of any doubt whatsoever that the petitioner was entitled to for Higher Grade which has fallen due on 15.7.1995. In that view Ext.P7 is clearly unsustainable. Accordingly, the same is quashed. Petitioners would be entitled to all consequential monetary and other benefits. Orders in this regard shall be passed by the competent among the respondents within one month from the date of receipt of a copy of this judgment.

The writ petition is allowed as above.

Sd/-
S.SIRI JAGAN,
JUDGE

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